
(2005) 08 UK CK 0033
In the Uttarakhand High Court
Case No : S.T.R. No. 7 of 2001

Commissioner of Sales Tax

APPELLANT

Vs

Omkar Rice Mills

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 35

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 15A(1), 4A

Citation : (2006) 144 STC 262 : (2005) 2 UD 721

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Pitamber Maulekhi, A.A.G, for the Appellant; Syed Nadim, for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This sales tax revision was filed before the Allahabad High Court in the year 1992, from where it has been received by transfer by this Court, u/s 35 of the U.P. Reorganisation Act, 2000, for its disposal.

2. The revision, preferred u/s 11(1) of the U.P. Sales Tax Act, 1948, is directed against order dated November 25, 1991, passed by the Sales Tax Tribunal, Haldwani in S.A. Nos. 111 of 1991 and 146 of 1991, whereby the appeal of the assessee was allowed and the appeal of the Revenue was dismissed.

3. The question of law involved in this revision is as under :

Whether, in the facts and circumstances of the case, the Sales Tax Tribunal was justified in holding that the dealer had no mens rea in issuing form IIIC(2) to the purchaser, even though he had not actually paid any tax ?

4. Heard Shri Pitamber Maulekhi, learned counsel for the Revenue and Shri Syed Nadim, learned counsel for the assessee.

5. The assessee is a dealer who runs a rice mill. He produces rice and rice polish.

He obtained eligibility certificate u/s 4-A of the U.P. Sales Tax Act, 1948. The dispute pertains to the penalty imposed for the assessment years 1985-86 and 1986-87.

6. Learned counsel for the Revenue, argued that the assessee, a new manufacturing unit, registered under the Sales Tax Act, 1948, obtained eligibility certificate u/s 4-A of the aforesaid Act. As such, it was exempted from the tax for the impugned assessment years. There is no dispute that he did not pay any tax for the assessment year, yet it issued form IIIC(2) to the purchaser of his rice, which means that he gave a declaration of the purchaser that he had actually paid the tax. In this connection, it is further argued that the revisionist was rightly imposed penalty amounting to Rs. 66,678, u/s 15-A(1)(1) of the aforesaid Act, after hearing the dealer. He supported his contention on the basis of the principle of law laid down in *Mahabir Rice Mills v. Commissioner of Sales Tax* 2000 UPTC 1159 and *Bajrang Industries v. Commissioner Trade Tax* 2001 (18) NTN 172. In view of said principle of law, as contained in the aforesaid case laws, this Court is in agreement with the submission of the learned counsel for the revisionist that once the assessee obtained the eligibility certificate u/s 4-A of the Act, by issuing form IIIC(2) to its purchaser, the assessee made the purchaser to evade the tax. As such, Section 15-A(1)(1), gets attracted in this case.

7. However, learned counsel for the respondent argued that there was no mens rea on the part of the assessee, as such, the learned Tribunal has rightly set aside the penalty imposed against him. Had there been a case where the eligibility certificate u/s 4-A was issued at late stage and meanwhile the assessee had used the form IIIC(2), obtained from the department, it could have been said that there was no mens rea on his part. However, in the present case, the respondent was in possession of eligibility certificate u/s 4-A and still used form IIIC(2), issued by the department, as such, it will be presumed that he had knowledge that though he had not paid the tax, he issued false declaration to the purchaser that the tax had been paid. Sri Syed Nadim, learned counsel for the assessee, contended that Section 15-A(1)(1) gets attracted when some false certificate or declaration is issued. In this connection, he further submitted that the form IIIC(2) was genuine, as obtained from the Sales Tax Officer. I am unable to agree with the submission of the learned counsel for the reason that though the department should not have issued form IIIC(2) to the assessee, but even if it was issued, since assessee had the knowledge that he had not paid the tax as such using form IIIC(2) was an offence which attracted penalty u/s 15-A(1)(1).

8. Therefore, this Court is of the view that the learned Sales Tax Tribunal has erred in law by setting aside the penalty. As such, the revision deserves to be allowed. And the same is allowed. Question of law as mentioned above is answered in favour of the Revenue. Impugned order dated November 25, 1991 is set aside to the extent imposition of penalty was reversed by the Tribunal.